

The Lexworth Perspective

CENTRAL BANK OF NIGERIA'S GLOBAL STANDING INSTRUCTION ('GSI') AND DEBT RECOVERY IN NIGERIA

INTRODUCTION

Money is necessary to facilitate commercial ventures. To meet the need and demand for money, the art of lending evolved with financial institutions, notably banks, providing large scale credit facilities mainly for investments and related matters. Sometimes, such credit facilities or loans call for security in the form of collateral. This is to safeguard the creditor from the loss that may be occasioned by non-repayment. When there is default in repayment, a debt is said to arise and subsequent events will be guided by the provisions of any agreement between the Parties.

Debt recovery practices seek to prove a debt and enforce the debtor's obligation. Credit institutions in the regulated loan and credit system in Nigeria (formal money lenders, Commercial and Micro-finance Banks and Mortgage Institutions) adopt this general practice of debt recovery. These financial institutions are prominent agents of growth in the economy as they provide important funds to fuel commerce.

Debt Recovery and the GSI System:

An increase in the number of non-performing Loans (NPL) within financial institutions in Nigeria led to the establishment of the Asset Management Corporation of Nigeria (AMCON) in 2010. The Corporation was conceived to be a stabilizing tool aimed at resolving the non-performing loan assets of banks and corporate organisations. Together with financial institutions, AMCON also uses the conventional mode of debt recovery, which include service of Demand letters/ claim, Mediation/ Arbitration,

Debt recovery suits in Court, enforcing loan security, etc. Following its advent in July, 2010, AMCON purchased 12,743 Non-Performing Loans worth N3.8 trillion from 22 Financial Institutions (FIs) for a consideration of N1.8 trillion.

In addition to financial stabilization offered to some ailing financial institutions, AMCON has so far resolved approximately 4,000 NPLs while more than 8,000 NPLs are outstanding. In most of the outstanding NPLs, a major militating factor is the inability to trace the obligor or the related asset. Bearing in mind that these loan portfolios were created before 2010, AMCON and its Asset Management partners are condemned to pursuing obligors and assets that have ceased to exist, dissipated or been transferred. The recovery exercise becomes more difficult with each passing year.

The Central Bank of Nigeria (CBN) recently introduced the Global Standing Instruction (GSI) to improve the credit repayment culture and reduce the number of NPLs within the Banking system. Citing powers conferred on it by Section 2(d) of the Central Bank of Nigeria Act 2007, the CBN issued the Operational Guideline on Global Standing Instruction (GSI) for Individual Bank accounts, applicable from 1st August, 2020. A CBN Circular dated 13th July, 2020 which was issued with the Guideline provides for the applicability of a Standing Mandate authorising Creditor Banks to deduct bad loans granted from 28th August, 2019 from bank balances of defaulting debtors in any Bank in Nigeria.

The GSI is applicable to Individual Savings/Current/Domiciliary accounts, investment/deposit accounts and electronic wallets. It is also applied where the accounts are jointly maintained (by the debtor and a third party).

The Guideline does not preclude a Creditor Bank from exploring other debt recovery mechanisms, since according to section 1.0, the GSI serves as the last resort by a Creditor Bank in recovering the principal and accrued interest only of a debt (excluding any penal charges thereon). Stakeholders in the GSI system include the Borrower, Creditor Bank, Participating Financial Institution, the Nigeria Inter-Bank Settlement System and the Central Bank of Nigeria. The stakeholders, especially the Participating Financial Institutions are obliged to include the GSI Mandate in their loan application process and educate borrowers on its implications. Thus, it is also mandatory for every Loan Agreement executed with a licensed financial institution in Nigeria to have the GSI Mandate from 1st August, 2020. This in effect, gives the Creditor Bank prior authorisation to set-off or amortise the debts when due, from the debtor's credit balances in any bank in Nigeria.

Enforcement and Sanction:

The Nigeria Inter-Bank Settlement System which facilitates payments within and across all Banks in Nigeria is obligated by the Guideline to ensure the application of the GSI Mandate and honour all instructions thereon. Thus, all licensed financial institutions in Nigeria are mandated to execute a GSI Mandate Agreement with the Nigeria Inter-Bank Settlement System and ensure that all qualifying accounts are tagged with correct Bank Verification Number (BVN). The participating financial institutions are also mandated to submit monthly returns to the CBN containing a summary of their GSI Transactions.

The Guideline provides for sanctions and penalties against Participating Financial Institutions that fail to honour a GSI Mandate or make inappropriate use of the system. For instance, the Guideline provides that where a participating financial institution fails to grant the GSI permission to debit an eligible account, the erring Participating Financial Institution shall pay a flat fine of N100,000.00 (one hundred thousand Naira) (per initial incident and each subse-

quent repeat request/instruction), regardless of the amount sought to be recovered (the GSI Trigger Amount).

On a positive note, the benefits of the GSI system to the Nigeria Credit System and repayment culture cannot be overemphasized. It is noteworthy that although AMCON has a lifespan of 10 years, its activities so far seem insufficient to resolve the many NPLs in the financial sector. It is hoped that the GSI Guideline will introduce credibility in the Nigeria's Banking System which has been bogged down with non-performing loans. The GSI system makes it easy to trace obligors and recover the sums due from them. Going forward, the system will reduce the weight of NPLs placed on AMCON as subsequent NPLs may be more easily resolved.

Implication and Challenges of the GSI:

It is however imperative to justify the GSI system against the laws of Contract and Banking upon which the Banker-Customer relationship is based. One becomes a customer when he makes an offer to open an account and the bank accepts, for instance through acceptance of a deposit. This undoubtedly creates a binding and enforceable contract with rights and obligation by either Party. One of the implications of the relationship is the distinct nature/liability of each account maintained by a Customer. Thus, an account maintained by a Customer represents a separate contract with the Bank and bears different rights/liabilities from another account (of different character) maintained with the same Bank, or any other Bank, as in this case. Although the GSI Mandate is a contract voluntarily entered into by a Customer/Borrower, we are of the opinion that it cannot apply to affect a separate contract with another Bank.

It is our opinion also that the GSI System will not apply to loans granted before its applicable date, i.e. 1st August, 2020. Although the CBN Circular dated 13th July, 2020 which heralded the GSI Guideline announced that the system will be applicable to eligible loans granted from 28th August, 2019, we submit that the GSI Guideline cannot apply retroactively to loans granted before its applicability, and which did not contemplate the method of debt recovery applied under the GSI System.

On a Bank's right to combine a customer's separate accounts, the general rule is that where a Customer keeps two or more accounts of different characters with a bank, it will not be presumed that credits in one of those accounts will extinguish debits in his other account or accounts in order of time. This was first decided in the English case of *Bradford Old Bank Ltd v. Sutcliffe* (1918) 2 KB 833, where it was held that payments to the credit of a current account must be appropriated to that accounts, and accordingly a guarantor for a loan account could not claim that payments to the current account should be taken in amortisation of debt due on the loan account.

However, where the Bank and its Customer agree, either of the Customer's account with it can be combined or set-off against each other. This is however applicable only where the accounts are maintained with the same Bank .

A further implication of the Banker-Customer relationship is confidentiality. This entails that the Banker must keep information about the Customer's account confidential and the customer's accounts must not be divulged to anyone, even after it is closed. However, exceptions to this general rule include where the banker is compelled by a court of law to divulge and where the banker can disclose based on a duty to the public. With respect to the GSI, it remains to be determined by the Courts whether the GSI system creates a public policy exception to enable Bankers divulge Customers' information to the NIBSS and other Bankers.

In conclusion, we surmise that the combination of two accounts in different banks will not sit well with customers who are adversely affected. It is expected that the legality of implementing the GSI System will be decided upon by the Courts against the background of established contract and Banking laws applicable in Nigeria. The Courts also need to determine whether the CBN can legislate, through Guidelines, on matters bordering purely on a private contractual relationship between a bank and its customers.

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